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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 934

CLEM LOCKERTY, ANTHONY CARUSO, EDWARD A. CARROLL, ET AL.,

Appellants,

vs.

CHARLES M. PHILLIPS, UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW JERSEY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

STATEMENT AS TO JURISDICTION.

HAROLD SIMANDL,
ARTHUR T. VANDERBILT,
Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 934

CLEM LOCKERTY, ANTHONY CARUSO, EDWARD A. CARROLL, LEO OSHINSKI AND ENKAY PACKING COMPANY, INC.,

Plaintiffs,

vs.

CHARLES M. PHILLIPS, UNITED STATES ATTORNEY FOR THE DISTRICT OF NEW JERSEY,

Defendant.

ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

STATEMENT OF BASIS OF JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the plaintiffs-appellants submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the three-judge district court entered in this cause on April 2, 1943. The application for

appeal was filed on April 9th, 1943, and is presented herewith, to wit, on the ninth day of April, 1943.

Jurisdiction.

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by the Act of August 24, 1937, 50 Stat. 754, 28 U. S. C. App. 380 (a). See *California Water Service Co.* v. *City of Redding*, 304 U. S. 252; *Jameson & Co.* v. *Morgenthau*, 307 U. S. 171; *Oklahoma, ex Rel. Phillips* v. *Guy F. Atkinson Co.*, 313 U. S. 508.

Statutes Involved.

Sections 2 (a) and (c), Section 3, Section 4 (a), Section 202 (b), Section 204 and Section 205 (b) of the Act of January 30, 1942; 56 Stat. 23, 50 U. S. C. App. 901, *et seq.*, commonly known as the Emergency Price Control Act of 1942, and Sections 2 and 3 of the Act of October 2, 1942, C. 578, 56 Stat. —, 50 U. S. C. App. 961, *et seq.*, commonly known as the Inflation Control Act of 1942, the pertinent provisions of which are as follows:

Provisions of the Emergency Price Control Act of 1942.

Section 2.

"(a) Whenever in the judgment of the Price Administrator (provided for in section 201) the price or prices of a commodity or commodities have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act, he may by regulation or order establish such maximum price or maximum prices as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum price, the Administrator shall ascertain and give due consideration to the prices prevailing between October 1 and October 15, 1941 (or if, in the case of any commodity,

there are no prevailing prices between such dates, or the prevailing prices between such dates are not generally representative because of abnormal or seasonal market conditions or other cause, then to the prices prevailing during the nearest two-week period in which, in the judgment of the Administrator, the prices for such commodity are generally representative), for the commodity or commodities included under such regulation or order, and shall make adjustments for such relevant factors as he may determine and deem to be of general applicability, including the following: Speculative fluctuations, general increases or decreases in costs of production, distribution, and transportation, and general increases or decreases in profits earned by sellers of the commodity or commodities, during and subsequent to the year ended October 1, 1941. Every regulation or order issued under the foregoing provisions of this subsection shall be accompanied by a statement of the considerations involved in the issuance of such regulation or order. As used in the foregoing provisions of this subsection, the term 'regulation or order' means a regulation or order of general applicability and effect. Before issuing any regulation or order under the foregoing provisions of this subsection, the Administrator shall, so far as practicable, advise and consult with representative members of the industry which will be affected by such regulation or order. In the case of any commodity for which a maximum price has been established, the Administrator shall, at the request of any substantial portion of the industry subject to such maximum price, regulation, or order of the Administrator, appoint an industry advisory committee, or committees, either national or regional or both, consisting of such number of representatives of the industry as may be necessary in order to constitute a committee truly representative of the industry, or of the industry in such region, as the case may be. The committee shall select a chairman from among its members, and shall meet at the call of the chairman. The Administrator shall from time to time,

at the request of the committee, advise and consult with the committee with respect to the regulation or order, and with respect to the form thereof, and classifications, differentiations, and adjustments therein. The committee may make such recommendations to the Administrator as it deems advisable. Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, without regard to the foregoing provisions of this subsection, issue temporary regulations or orders establishing as a maximum price or maximum prices the price or prices prevailing with respect to any commodity or commodities within five days prior to the date of issuance of such temporary regulations or orders; but any such temporary regulation or order shall be effective for not more than sixty days, and may be replaced by a regulation or order issued under the foregoing provisions of this subsection."

"(c) Any regulation or order under this section may be established in such form and manner, may contain such classifications and differentiations, and may provide for such adjustments and reasonable exceptions, as in the judgment of the Administrator are necessary or proper in order to effectuate the purposes of this Act. Any regulation or order under this section which establishes a maximum price or maximum rent may provide for a maximum price or maximum rent below the price or prices prevailing for the commodity or commodities, or below the rent or rents prevailing for the defense-area housing accommodations, at the time of the issuance of such regulation or order."

Section 3.

"(a) No maximum price shall be established or maintained for any agricultural commodity below the highest of any of the following prices, as determined and published by the Secretary of Agriculture: (1) 110 per centum of the parity price for such commodity, adjusted by the Secretary of Agriculture for grade,

location, and seasonal differentials, or, in case a comparable price has been determined for such commodity under subsection (b), 110 per centum of such comparable price, adjusted in the same manner, in lieu of 110 per centum of the parity price so adjusted; (2) the market price prevailing for such commodity on October 1, 1941; (3) the market price prevailing for such commodity on December 15, 1941; or (4) the average price for such commodity during the period July 1, 1919, to June 30, 1929.

(b) For the purposes of this Act, parity prices shall be determined and published by the Secretary of Agriculture as authorized by law. In the case of any agricultural commodity other than the basic crops corn, wheat, cotton, rice, tobacco, and peanuts, the Secretary shall determine and publish a comparable price whenever he finds, after investigation and public hearing, that the production and consumption of such commodity has so changed in extent or character since the base period as to result in a price out of line with parity prices for basic commodities.

(c) No maximum price shall be established or maintained for any commodity processed or manufactured in whole or substantial part from any agricultural commodity below a price which will reflect to producers of such agricultural commodity a price for such agricultural commodity equal to the highest price therefor specified in subsection (a).

(d) Nothing contained in this Act shall be construed to modify, repeal, supersede, or affect the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, or to invalidate any marketing agreement, license, or order, or any provision thereof or amendment thereto heretofore or hereafter made or issued under the provisions of such Act.

(e) Notwithstanding any other provision of this or any other law, no action shall be taken under this Act by the Administrator or any other person with respect

to any agricultural commodity without the prior approval of the Secretary of Agriculture; except that the Administrator may take such action as may be necessary under section 202 and section 205 (a) and (b) to enforce compliance with any regulation, order, price schedule or other requirement with respect to an agricultural commodity which has been previously approved by the Secretary of Agriculture.

(f) No provision of this Act or of any existing law shall be construed to authorize any action contrary to the provisions and purposes of this section."

Section 4.

"(a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing."

Section 202.

"(b) The administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-area housing accommodations. The Administrator may administer

oaths and affirmations and may, whenever necessary, by subpena require any such person to appear and testify or to appear and produce documents, or both, at any designated place."

Section 204.

(a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceedings: *Provided*, That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The

Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof, and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

(b) No such regulation, order, or price schedule shall be enjoined or set aside, in whole or in part, unless the complainant establishes to the satisfaction of the court that the regulation, order, or price schedule is not in accordance with law, or is arbitrary or capricious. The effectiveness of a judgment of the court enjoining or setting aside, in whole or in part, any such regulation, order, or price schedule shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed with the Supreme Court under subsection (d) within such thirty days, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such petition becomes final, or until other final disposition of the case by the Supreme Court.

(c) There is hereby created a court of the United States to be known as the Emergency Court of Appeals, which shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. The Chief Justice of the United States shall designate one of such judges as chief judge of the Emergency Court of Appeals, and may, from time to time, designate additional judges for such court and revoke previous designations. The chief judge may, from time to time, divide the court into divisions of three or more members, and any such division may render judgment as the judgment of the court. The court shall have the powers of a district court with respect to the jurisdiction conferred on it by this Act; except that the court shall not have power to issue any temporary restraining order or interlocutory decree

staying or restraining, in whole or in part, the effectiveness of any regulation or order issued under section 2 or any price schedule effective in accordance with the provisions of section 206. The court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction under this Act. The Court may fix and establish a table of costs and fees to be approved by the Supreme Court of the United States, but the costs and fees so fixed shall not exceed with respect to any item the costs and fees charged in the Supreme Court of the United States. The court shall have a seal, hold sessions at such places as it may specify, and appoint a clerk and such other employees as it deems necessary or proper.

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule,

or any provision of any such regulation, order, or price schedule, or "to restrain or enjoin the enforcement of any such provision."

Section 205.

"(b) Any person who willfully violates any provision of section 4 of this Act, and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or section 202, shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to imprisonment for not more than two years in the case of a violation of section 4 (c) and for not more than one year in all other cases, or to both such fine and imprisonment. Whenever the Administrator has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought."

Provisions of the Inflation Control Act of 1942.

Section 2.

"The President may, from time to time, promulgate such regulations as may be necessary and proper to carry out any of the provisions of this Act; and may exercise any power or authority conferred upon him by this Act through such department, agency, or officer as he shall direct. The President may suspend the provisions of sections 3 (a) and 3 (c), and clause (1) of section 302 (c), of the Emergency Price Control Act of 1942 to the extent that such sections are inconsistent with the provisions of this Act, but he may not under the authority of this Act suspend any other law or part thereof."

Section 3.

"No maximum price shall be established or maintained for any agricultural commodity under authority of this Act or otherwise below a price which will reflect

to producers of agricultural commodities the higher of the following prices, as determined and published by the Secretary of Agriculture—

(1) The parity price for such commodity (adjusted by the Secretary of Agriculture for grade, location, and seasonal differentials) or, in case a comparable price has been determined for such commodity under and in accordance with the provisions of section 3 (b) of the Emergency Price Control "Act of 1942, such comparable price (adjusted in the same manner), or

(2) The highest price received by such producers for such commodity between January 1, 1942, and September 15, 1942 (adjusted By the Secretary of Agriculture for grade, location, and seasonal differentials), or, if the market for such commodity was inactive during the latter half of such period, a price for the commodity determined by the Secretary of Agriculture to be in line with the prices, during such period, of other agricultural commodities produced for the same general use;

and no maximum price shall be established or maintained under authority of this Act or otherwise for any commodity processed or manufactured in whole or substantial part from any agricultural commodity below a price which will reflect to the producers of such agricultural commodity a price therefor equal to the higher of the prices specified in clauses (1) and (2) of this section: *Provided*, That the President may, without regard to the limitation contained in clause (2), adjust any such maximum price to the extent that he finds necessary to correct gross inequities; but nothing in this section shall be construed to permit the establishment in any case of a maximum price below a price which will reflect to the producers of any agricultural commodity the price therefor specified in clause (1) of this section: *Provided further*, that modifications shall be made in maximum prices established for any agricultural commodity and for commodities processed or

manufactured in whole or substantial part from any agricultural commodity, under regulations to be prescribed by the President, in any case where it appears that such modification is necessary to increase the production of such commodity for war purposes, or where by reason of increased labor or other costs to the producers of such agricultural commodity incurred since January 1, 1941, the maximum prices so established will not reflect such increased costs: *Provided further,* That in the fixing of maximum prices on products resulting from the processing of agricultural commodities, including livestock, a generally fair and equitable margin shall be allowed for such processing: *Provided further,* That in fixing price maximums for agricultural commodities and for commodities processed or manufactured in whole or substantial part from any agricultural co[illegible]odity, as provided for by this Act, adequate weig[illegible]g shall be given to farm labor."

The Issues and the Ruling Below.

The complaint in this case was filed on March 8, 1943 and the amended and supplemental complaint was filed on March 26, 1943 by leave granted in open Court at the hearing before the three-judge District Court.

Summary of the Amended and Supplemental Complaint

The plaintiffs are citizens and residents of the State of New Jersey. The amount in controversy as it affects each, exceeds, exclusive of interest and costs, the sum of $3,000.

Each of the plaintiffs has been for many years and now is engaged as a wholesale merchant in buying and selling and dealing in meats in the northern part of the State of New Jersey. In connection with their business, each maintains a substantial structure containing the necessary equipment for the handling and distribution of meat. Each has so conducted his business that he has hundreds of customers, a well established trade, and has created a goodwill of great value.

The value of the assets of each of the plaintiffs is upwards of $25,000 above his just liabilities. They are not slaughterers of cattle or livestock, but purchase dressed meat which has been inspected and passed under Federal Laws from those of the meat industry who purchase, slaughter and process livestock, known and referred to as packers. After purchasing the dressed meat, plaintiffs butcher it into appropriate cuts to meet the demands and requirements of their trade and they sell and dispose of the meat to their customers who are, in the main, retail butchers maintaining small shops throughout the northern part of New Jersey. The packers ordinarily purchase the cattle for slaughtering purposes from cattle raisers, feeders and others engaged in the business of scientifically breeding, raising and preparing cattle and marketing them for slaughtering purposes. The price at which meat can be distributed by the wholesaler to the retailer and by him in turn to the consumer, depends entirely upon the following factors:

(a) The market price paid by the packer for the livestock in which must be included the cost of the agricultural commodities used in scientifically raising, breeding and feeding such livestock; also the expense of maintaining, handling and transporting the same to the point where the livestock is purchased by the packers.

(b) The cost to the packer in acquiring and transporting the same to his establishment and the cost of curing, dressing, processing and distributing the dressed meat to the wholesaler.

(c) The cost to the wholesaler in acquiring, cutting, preparing, handling and delivering the dressed meat to the retailer.

(d) The cost to the retailer in finally selling the product to the ultimate consumer.

It is further alleged that the supply of plaintiffs' meat products and of all others similarly situated is controlled

and limited entirely by the number of cattle that packers conclude to slaughter. The number of cattle which the packers will undertake to slaughter in turn depends on whether it is reasonably profitable for them to do so. The enactment by Congress of the Emergency Price Control Act of 1942 and of the Inflation Control Act of 1942 is set forth and it is alleged that, purporting to act under the authority of those Acts, the Price Administrator promulgated Maximum Price Regulation No. 169 [1] and Revised Maximum Price Regulation No. 169 [2] wherein he purported to prohibit the sale or delivery of any wholesale cut of beef at a price higher than the maximum price set forth in the regulations.

It is further alleged that because of Section 3 of the Emergency Price Control Act and because of Section 3 of the Inflation Control Act, no maximum price was established by the Administrator for agricultural commodities or livestock, notwithstanding the interrelation between the price of livestock and the agricultural commodities used in breeding, raising and feeding said livestock. It is then alleged that under the setup of the meat industry as it had been long and firmly established at the time of the adoption of said Acts, there was such an interrelation between the various stages in the operation of the industry, that the inevitable result of the design and scheme of said Acts would be such a rise in the price of livestock and other agricultural commodities used in breeding, raising and feeding said livestock, that the packer would be unable to slaughter and process livestock without great loss and would therefore refuse to slaughter the same, bringing about a complete shutting off of the supply of meat to plaintiffs, thereby forcing them out of business and causing a complete shutting off of the supply of meat to the general public. What was thus contemplated and intended by the Acts in fact came to

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[1] Maximum Price Regulation No. 169 appears at 7 F. R. 4653.

[2] Revised Maximum Price Regulation No. 169, OPA 1267.

pass, as the result of the Administrator's construction and application thereof, and the plaintiffs and others similarly situated are on the verge of being forced out of business, many others have been forced out of business and in addition, the supply of meat to the general public has been substantially stopped. It is further alleged that on February 9, 1943, the grand jury returned indictments against these plaintiffs and others, all of which indictments are in substantially the same form, and contain multiple counts ranging from five to thirty counts. Each count was based on an alleged single sale of beef at a price in excess of the price permitted by the regulations in violation of Section 4 (a) of the Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169. In addition, there was in many of the indictments a single additional count charging that the plaintiffs had failed to make and preserve a complete and accurate record of such sale in violation of Section 4 (a) of the Emergency Price Control Act of 1942 and Maximum Price Regulation No. 169.

It is further alleged that in the business of each of the plaintiffs hundreds of sales took place daily as the result of which each of them is subject to the possibility of prosecution with respect to each and every one of the many transactions in which they daily necessarily take part. It is alleged that the defendant, through his assistants, has declared that he intends to and will, unless prevented by injunctive order of the Court, present further testimony to the grand jury for the purpose of securing further and additional indictments based upon alleged violations of the Emergency Price Control Act and of the regulations promulgated thereunder. There will therefore inevitably ensue enormous multiplicity of criminal proceedings and if any of the plaintiffs are convicted, they may be compelled to pay such heavy fines that their entire assets may be wiped out. In addition, they may be compelled to suffer

imprisonment. The indictments and threatened prosecution of plaintiffs and others similarly situated are and must be based upon the validity of the Emergency Price Control Act of 1942, and it is alleged that said Act is wholly invalid and unconstitutional as being in conflict with Article I, Section 1, and Section 1 and Section 2, Clause 3 of Article III of the Constitution of the United States, and is in conflict with the Fifth and Sixth Amendments to the Constitution of the United States. It is then alleged that unless the defendant is restrained by injunctive order of the Court from prosecuting or attempting to prosecute and from obtaining or attempting to obtain further indictments against these plaintiffs and others similarly situated, they will suffer great and irreparable loss for which they would have and could have no remedy whatsoever.

The relief prayed for by the plaintiffs is that the Court declare and decree the Emergency Price Control Act of 1942 as amended by the Act of October 2, 1942, including Sections 204 (c) and (d) of the Emergency Price Control Act, unconstitutional and invalid and that there be issued an injunction prohibiting the defendant from enforcing or attempting to enforce against the plaintiffs said Emergency Price Control Act of 1942 as amended and from prosecuting or attempting to prosecute the indictments returned on February 9, 1943, and from attempting to institute any other or further prosecutions against them and from in any manner interfering with them or with their business under or by virtue of any right or authority claimed to exist by reason of the said Act as amended, or any part thereof.

Proceedings Subsequent to Filing of Complaint.

Upon the filing of the complaint, application was made to District Judge Guy L. Fake for a temporary restraining order. Judge Fake immediately requested the Senior Cir-

cuit Judge of the Third Circuit to designate two other Judges to participate in hearing and determining such application.

On March 10, 1943, pursuant to the statute (50 Stat. 752) an order was entered designating Circuit Judge Albert B. Maris and District Judges Guy L. Fake and Thomas F. Meaney to hear the case on statutory hearing. On March 11, 1943, on notice to defendant, application was made to the District Judge for a temporary restraining order. The defendant agreed not to prosecute the indictments until after the hearing before the three-judge court and the District Judge thereupon ordered that the application for the temporary restraining order be continued to be heard before the three-judge court at the same time set for the hearing of defendant's motion to dismiss the complaint filed that day.

On March 26, 1943, defendant's motion to dismiss and plaintiffs' motion for an interlocutory injunction were brought on for hearing before the three-judge district court, due notice of the hearing having been given to the Attorney General of the United States, who was represented at the hearing by Robert L. Wright, Special Assistant to the Attorney General. On March 29, 1943, the Court filed its opinion, Judge Fake dissenting, holding that Section 204(d) of the Act is constitutional and that said Section has withdrawn from the Court the jurisdiction and power to grant the relief prayed for and ordering that the complaint be dismissed for want of jurisdiction.

On April 2, 1943, an order was filed and judgment entered thereon, dismissing the amended and supplemental complaint.

The Questions Are Substantial.

The Supreme Court has not yet had occasion to rule on the validity of the price control provisions, or any other

provisions of the Emergency Price Control Act of 1942, or of the Inflation Control Act of 1942.

There is a conflict of decisions in the lower federal courts as to the validity of the rent control provisions of the Emergency Price Control Act which provisions are similar to the price control provisions. In *Henderson* v. *Kimmel*, 47 F. Supp. 635, the three-judge court for the District of Kansas sustained the validity of the rent control provisions. In *Roach* v. *Johnson*, D. C. N. D. Ind. (Feb. 25, 1943), the District Court for the Northern District of Indiana held the rent control provisions unconstitutional. A direct appeal was taken from that decision to the United States Supreme Court by the intervenor, United States of America, and on Monday, April 5, 1943, the Supreme Court announced it would postpone until the oral argument decision on the question of jurisdiction.

The following decisions of the Supreme Court appear to sustain the plaintiffs' contention that the substantive provisions of the Act are unconstitutional: *Field* v. *Clark*, 143 U. S. 649; *Wichita* v. *Public Utility Co.*, 260 U. S. 48; *J. W. Hampton, Jr., & Co.* v. *U. S.*, 276 U. S. 394; *Panama Refining Co.* v. *Ryan*, 293 U. S. 388; *Schechter* v. *U. S.*, 295 U. S. 495, and *U. S.* v. *Butler*, 297 U. S. 1.

The following decisions of the Supreme Court appear to sustain the plaintiffs' contention that Section 204(d), being an integral part of the Act, is invalid because of the invalidity of the substantive provisions of the Act: *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50; *Hill* v. *Wallace*, 259 U. S. 44; *Champlain Refining Co.* v. *Corporation*, 286 U. S. 210; *Williams* v. *Standard Oil*, 278 U. S. 235.

If Section 204(d) is divisible or separable from the remainder of the Act, the following decisions of the Supreme Court appear to sustain planitiffs' contention that the Section is unconstitutional: *Pac. Tel. & Tel. Co.* v. *Kuykendahl*, 265 U. S. 196; *Michaelson* v. *U. S.*, 266 U. S. 42; *An-*

niston Mfg. Co. v. *Davis*, 301 U. S. 337; *Meyers* v. *Bethlehem Shipbuilding Co.*, 303 U. S. 41.

The following decisions of the Supreme Court appear to sustain plaintiffs' contention that the District Court should have retained jurisdiction of the complaint: *Tedrow* v. *A. T. Lewis & Son Dry Goods Co.*, 255 U. S. 98; *Borden's Farm Prod. Co.* v. *Baldwin*, 293 U. S. 194; *Panama Refining Co.* v. *Ryan*, 293 U. S. 288, and *Gibbs* v. *Buck*, 307 U. S. 76.

Respectfully submitted,

HAROLD SIMANDL,
Attorney for Plaintiffs.
ARTHUR T. VANDERBILT,
Of Counsel with Plaintiffs.